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No. ...-...

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

CHURCH OF SCIENTOLOGY OF CALIFORNIA
and MARY SUE HUBBARD,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Where the central issue in a lawsuit is the maintenance of the privacy of personal, religious and associational materials, and where a state trial court has released such materials to the public pursuant to defenses that are claimed to be unrecognized and impermissible as a matter of law, does due trocess of law require that the materials be sealed pending the resolution of appeal because otherwise the harm asserted will be irreparable and appellants will be deprived of any meaningful access to appellate review?

2. Where the central issue in a lawsuit is the maintenance of the privacy of personal, religious and

associational materials hitherto unreleased to the public, does the constitutional right of privacy require that the privacy of the materials be maintained during the course of an appeal which asserts that the trial court erred in ordering the public release of the hitherto private materials?

3. Does due process of law permit a party to be deprived of judicial relief based upon generalized, unrelated claims of bad conduct, particularly when the party is deprived of interim relief to maintain the status quo ante in order to seek appellate review of the denial of judicial relief?

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Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Petitioners Church of Scientology of California and Mary Sue Hubbard respectfully pray that a writ of certiorari

issue to review the denial by the United States District Court of petitioners' application for a preliminary injunction. Petitioners' emergency application for an injunction pending appeal has been denied by the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW.

No written opinion has been issued by the district court or the court of appeals. The order of the District Court for the Central District of California, entered on November 19, 1984, appears in the appendix. The orders of the United States Court of Appeals for the Ninth Circuit, filed November 21, 1984, and November 27, 1984, also appear in the appendix.

JURISDICTION.

The order of the District Court for the Central District of California was entered on November 19, 1984. The final order of the United States Court of Appeals for the Ninth Circuit was entered on November 27, 1984. This petition for certiorari has been filed within 90 days of that date. This court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

United States Constitution:

Amendment 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 14.

Section 1 . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 42:

§1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or

the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Preliminary Statement

This petition for writ of certiorari is sought before final judgment by the United States Court of Appeals for the

Ninth Circuit at the suggestion of that court. The reason for seeking certiorari at this time is unique to the circumstances of this case, as recognized by the court of appeals. As more fully set forth herein (infra), petitioners sought a preliminary injunction from the United States District Court for the Central District of California to prohibit respondent from releasing numerous documents on the grounds that such release would violate petitioners' right to personal and religious privacy, access to the courts, and due process of law. The district court denied the preliminary injunction, and appeal was immediately taken to the Ninth Circuit. A single judge of that court stayed release of the documents for several days, but on

November 27, 1984, the court of appeals denied petitioners' application for an injunction pending appeal of the district court's denial of petitoners' motion for preliminary injunction. Since the court of appeals' denial of the application for injunction pending appeal was pursuant to the identical legal standard as that applicable to the district court's consideration of the motion for preliminary injunction, see Lopez v. Heckler, 713 F.2d 1432, 1435 (9th Cir. 1983), its action in effect disposed of the appeal on the merits as well. It is for that reason, apparently, that the court of appeals extended the order staying release of the documents until petitioner filed a petition for writ of certiorari with this court. Presumably,

upon filing of this petition, the stay will continue in effect until the petition is acted upon.

B. The Parties

The Church of Scientology of California, Inc., is part of the organized hierarchical Church within the religious movement of Scientology (hereafter "Church"). The Church is a religious organization entitled to invoke the protection of the Free Exercise Clause of the First Amendment of the United States Constitution.

Mary Sue Hubbard is the wife of the Founder of the religion of Scientology, L. Ron Hubbard. She and Mr. Hubbard were married in the early 1950's, at the time the Scientology religion was beginning.

She held various posts within the religious structure of Scientology until May, 1981.

The Superior Court of the State of California, County of Los Angeles, is the court of general trial jurisdiction in California which heard the case of Church of Scientology of California, Plaintiff, and Mary Sue Hubbard, Intervenor v. Gerald Armstrong, No. C 420153 (hereafter "superior court"). That court made available for public inspection and copying thousands of pages of personal, private and religious papers, the maintenance of whose privacy were the heart of the action, and refused to maintain them under seal pending state appellate review of the propriety of its rulings.

Gerald Armstrong is the defendant in the state case and the cross-complainant in a separate cross complaint brought against the Church of Scientology of California, which is still pending (hereafter "state defendant"). Mr. Armstrong is a former member of the Church of Scientology. He left his Church staff position and severed all ties with the Church in December, 1981.

C. The Documents

The private and religious documents at issue were, according to the decision of the state trial court, converted by Gerald Armstrong from the Church of Scientology of California, which held the

documents as bailee for L. Ron Hubbard.[1/] Mr. Armstrong had gathered the documents while he was serving in his official capacity as a staff member of the Church employed to establish and maintain an archive of materials gathered about the life of the Founder, L. Ron Hubbard, and the history of Scientology.

The thousands of pages of documents, which will be released to the public unless this court grants certiorari and

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1/ L. Ron Hubbard is the Founder of the religion of Scientology. The written and spoken word of L. Ron Hubbard constitute the doctrine of the religion of Scientology. For the last several years, as he has occasionally done throughout his life, and as many others have done for similar reasons, Mr. Hubbard has chosen to remain in seclusion in order to further his religious writings and research without interruption. He was not a party to either the state case or the district court action.

ultimately requires that they be maintained under seal pending final appellate resolution of the state case, are private materials which are the property of L. Ron Hubbard, of his family, including his wife, Mary Sue Hubbard, and of the Church. They include the most private of matters -- letters between Mr. Hubbard and his present and former wives; other personal letters; private notes and diaries; handwritten research notes of L. Ron Hubbard; Mr. Hubbard's personal Naval and Veterans Administration records, including medical records; early private religious writings by L. Ron Hubbard, encompassing incomplete research notes and ideas and theories, including notes of the ideas of others which have been compiled by L. Ron

Hubbard; Scientology financial and organizational memoranda including information pertaining to members of the Church; unpublished personal poetry; and other documents written by Mr. Hubbard, as the Founder of the religion of Scientology, over the course of fifty years.

D. The Superior Court Proceedings

Petitioner Church's state court complaint, alleging torts of conversion, breach of fiduciary duty, and seeking injunctive relief, was filed in the Los Angeles Superior Court on August 2, 1982. A Complaint in Intervention was filed on November 28, 1982, by petitioner Mary Sue Hubbard.

On August 24, 1982, the Church's application for a temporary restraining

order was granted by the Honorable John L. Cole. Judge Cole's order restrained Mr. Armstrong and his agents from duplicating, disclosing and disseminating the documents in question. Judge Cole also ordered that the documents were to be surrendered to the possession of the clerk of the superior court under seal, only to be viewed by the attorneys of record for use in the state case. The documents remained under seal pursuant to a preliminary injunction issued on October 4, 1982, which was later clarified in an Order filed December 23, 1982.

Trial commenced on May 3, 1984. On May 9, following the completion of petitioners' case in chief, the superior court ruled that they had established, by

a preponderance of the evidence, an invasion of privacy, breach of fiduciary duty and conversion by Mr. Armstrong with respect to the documents.

For his defense, Mr. Armstrong relied on the novel theories, permitted only on the eve of trial, that (a) he was justified in taking the documents based upon his belief that these private and confidential papers showed alleged frauds and misrepresentations, and (b) the documents were taken because they were necessary for preparation of a hypothetical lawsuit that he believed would be brought against him by the Church, and that he conveyed these materials to his attorneys to hold the documents as evidence in such an anticipated lawsuit. He also was

permitted to assert the defense of unclean hands, even though this defense had been stricken on four separate occasions in the case until the superior court allowed it for the first time at trial. Petitioners contended that these defenses were impermissible as a matter of law and under the circumstances of the case.

Only because Mr. Armstrong was permitted to raise the defenses of "justification" and "unclean hands" were the subject documents admitted into evidence. The defendant proceeded with his case, during which the sealed documents were marked as exhibits. During the trial, the superior court maintained the documents under seal. However, on June 6 and 7, 1984, after all

parties had rested, the superior court, over petitioners' strenuous objections, received into evidence a large number of documents, removing them from the sealing order. The seal was also removed on many documents marked as exhibits but not admitted into evidence. As of this date, no documents have yet been made publicly available, but they will imminently be so available absent the grant of certiorari by this Court.

E. The Superior Court's Decision

On June 20, 1984, the superior court issued a Memorandum of Intended Decision which was subsequently converted into a Statement of Decision. That decision ruled in Mr. Armstrong's favor on both the equitable and damage claims.

The superior court found that, while petitioners had established a prima facie case, defendant Armstrong prevailed on the previously described "justification" and "unclean hands" defenses. With respect to both the justification and unclean hands defenses, the court relied upon generalized conclusions that the Church and Mr. Hubbard had engaged in past practices -- not against Mr. Armstrong -- some of which predated the incidents in question by twenty to thirty years. The court characterized the Church in gratuitously hostile terms, as it did the religion's Founder. Regarding Mrs. Hubbard, who had left any position with the Church prior to any of the events at issue, the superior court did not even indicate that it based its

decision to deny her equitable relief or damages as a result of anything she had purportedly done or known about regarding Mr. Armstrong, but simply painted her with a generalized pejorative brush and denied her claims for relief.

The Memorandum of Intended Decision reaffirmed the superior court's earlier decision to remove the seal from the documents at issue in the case and made clear that it was intended to modify the preliminary injunction for the purpose of making the documents, and the previously sealed inventory lists thereof, available for public inspection and copying. The superior court refused to stay its order pending resolution of the state court appeal.

F. State Appellate Efforts

Notice of Appeal from the superior court's order dissolving, in part, the preliminary injunction, was filed June 21, 1984. Final judgment was entered on August 10, 1984, when the superior court adopted the Memorandum of Intended Decision as his final order. Notice of Appeal from this judgment was filed August 23, 1984. Both the California Court of Appeal and California Supreme Court entered temporary stays, maintaining the seal on the documents. The last of those stays, entered by the California Supreme Court, expired on November 15, 1984.

G. Federal Court Efforts

Petitioners herein filed a verified complaint seeking injunctive relief

pursuant to 42 U.S.C. §1983 in the United States District Court on November 19, 1984. The complaint alleged that the failure to maintain the materials under seal during the state court appeal denied petitioners due process of law in that, without such a seal, their appellate remedy would be rendered effectively meaningless, thus depriving them of meaningful access to the courts. The complaint also alleged that the California Superior Court's refusal, acting under color of state law, to maintain a seal on the private materials pending resolution of the state court appeal, deprived petitioners of their rights under the First and Fourteenth Amendments to the Constitution in that the Constitutional rights to freedom of

religion, of association, and of privacy require that said documents remain sealed.

An application for a temporary restraining order was filed concurrently. In the application for the restraining order, petitioners requested that the district court order the Los Angeles Superior Court to refrain from unsealing the documents and releasing said documents to the public. District Judge Harry Hupp heard argument on the restraining order on November 19, 1984. When the district court indicated its intention to deny the restraining order, plaintiffs requested the court to deem the application for the restraining order a motion for preliminary injunction. The district court so deemed the application

and denied the injunction, finding "no violation or any substantial chance of establishing a violation of the federal constitution." (Appendix p. 2).

Notice of Appeal from the district court's denial of the preliminary injunction was filed November 20, 1984. On November 21, 1984, an emergency motion for injunction pending appeal was filed in the United States Court of Appeals for Ninth Circuit. By order dated November 21, 1984, the Honorable William A. Norris, Circuit Judge, temporarily granted the injunction, until November 27, 1984, in order to give the parties an opportunity to present papers to a regularly constituted motions panel. (Appendix, p. 4-5). On November 27, 1984, the emergency motion for an injunction

pending appeal was denied by the court of appeals, but the seal was ordered to remain in effect until December 7, 1984, to permit the filing of a petition for writ of certiorari in Court. The order further stated that no petition for rehearing would be entertained. (Appendix, p. 6-7).

REASONS FOR GRANTING THE WRIT

This petition presents this Court with the opportunity to provide guidance to the lower courts on an issue which implicates significant constitutional rights of privacy, freedom of religion and due process, and presents a very real problem in the practical administration of justice. The fundamental constitutional claim which petitioners presented to the district court was that,

unless a seal is maintained on the documents pending final outcome of the state appellate process, plaintiffs will be denied due process of law. The superior court action was brought as the only means available to protect the privacy and confidentiality of the documents. At trial, the superior court allowed thousands of pages of these private documents to be identified and introduced, over petitioners' strenuous objections, in support of defendant's affirmative defenses of "justification" and "unclean hands." The central contention in the state appeal will be that these defenses were impermissible and that, accordingly, the superior court wrongfully allowed the documents to be introduced and identified. If

petitioners' contention is upheld, the superior court will have been in error in permitting the documents to be introduced and in removing the seal from them based on that introduction.

However, if a seal is not maintained on the documents pending resolution of the state court appeal, petitioners' ability to obtain any meaningful appellate review will be destroyed because the main issue on appeal is that the documents should not have been introduced and unsealed. Thus, if petitioners prevail on appeal, it will be too late to vindicate their rights. Accordingly, due process of law requires that the documents remain sealed pending resolution of the federal appeal.

Petitioners' constitutional claims are particularly important because the personal and religious documents which are threatened with public release are private documents protected by the privacy and religious clauses of the constitution, and because the very decision of the California Superior Court was based upon generalized claims of bad conduct by plaintiffs, unrelated to the issues raised by the pleadings, in violation of due process of law.

Despite these compelling constitutional claims, the district court refused to grant a preliminary injunction because it did not perceive any constitutional issues in the claims. Similarly, both the district court and the Ninth Circuit Court of Appeals

refused to grant an injunction pending appeal to the Ninth Circuit, thus effectively preventing petitioners from obtaining meaningful review of their consitutional claims before the Ninth Circuit. Accordingly, only the immediate grant of a writ of certiorai by this court can provide effective review of the grave constitutional questions at stake.

The state of the law in this area is not well defined and, thus, the lower courts must resolve problems of this type on a case by case basis without guidance from this Court. More particularly, the failure of the district court to recognize petitioners' claims as ones of constitutional dimension raises important questions of constitutional law, of the proper handling of relations between the

federal and state judiciary, and of the standards for insuring the protection of fundamental rights during state court appeals.

The record in this case presents a particularly favorable setting in which to resolve many of these issues. The rights of petitioners are of extraordinary importance; there is a significant possibility of reversal on appeal of the superior court judgment; and, if the documents are released, petitioners will suffer the irreparable harm of public disclosure which cannot be remedied even with a complete reversal on appeal. Thus, this case squarely frames these significant questions, questions which are usually not susceptible of resolution by this Court becuase the harm

has generally occurred before this court ever has the opportunity to address these issues.

1. THE DUE PROCESS RIGHT TO MEANINGFUL ACCESS TO THE GENERALLY AVAILABLE APPELLATE REMEDIES IS AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW, WHOSE CLARIFICATION IS OF SIGNIFICANCE TO BOTH THE STATE AND FEDERAL COURTS' ADMINISTRATION OF JUSTICE.

This Court has made it clear that the right of access to the courts is fundamental and that its denial is a violation of the due process clause of the Fourteenth and the Fifth Amendments. As early as 1907, this Court underscored the fundamental nature of the right of access to the courts:

> "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government."

Chambers v. Baltimore and Ohio Railroad Co., 207 U.S. 142, (1907); see also Barbier v. Connolly, 113 U.S. 27, (1885).

The federal courts have long recognized that access to the courts encompasses "all the means required for a litigant to get a fair hearing from the judiciary on the charges brought against him or grievances alleged by him." O'Conner v. Mowbray, 504 F. Supp. 139 (D. Nev. 1980) (enjoining Nevada Supreme Court from restricting public access to that Court's library on basis of due process right of access to the courts);

Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970), aff'd 404 U.S. 15 (1970).

This Court, in cases raising fundamental interests similar to the rights of privacy and religious freedom asserted here, has recognized the constitutional requirement that parties must be given meaningful opportunity to be heard through the judicial process. See, e.g., Boddie v. Connecticut, 401 U.S. 371 (1971) (due process of law prohibits a state from denying, solely because of inability to pay court fees and costs, access to its courts to indigents who seek judicial dissolution of their marriages). Further this Court has repeatedly recognized that a mere formal right of access to the courts does not satisfy the constitutional

requirements. Rather, the access must be "adequate, effective, and meaningful." Bounds v. Smith, 430 U.S. 817, 822 (1977).

The requirement of meaningful access to appellate courts is demonstrated in a case closely paralleling the instant case, Henry v. First National Bank of Clarksdale, 424 F. Supp. 633 (N.D. Miss. 1976), aff'd 595 F.2d 291 (5th Cir. 1979) in which the United States District Court, in a §1983 action, enjoined the Mississippi state court from requiring the NAACP to post an appeal bond in a case raising First Amendment issues because the state rule deprived plaintiffs of due process of law. Ultimately this Court granted certiorari on the merits of the case and reversed

the Mississippi state court judgment on First Amendment grounds. See NAACP v. Claiborne Hardware, 458 U.S. 886 (1982). Of course, had the federal district court in Henry not enjoined the appeal bond, the NAACP may never have been able to pursue its appellate remedies and ultimately vindicate its rights before this Court.

Where a state provides a right to appeal, it must meet the requirments of due process and equal protection. See Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956). However, despite this well known proposition, the due process standards for ensuring that a meaningful appeal is not effectively destroyed because the state court refuses to give relief

necessary to allow meaningful appellate review are not at all clear. This petition provides an opportunity to clarify and articulate those standards.

The instant documents were admittedly taken without authorization by Mr. Armstrong. In a classic "Catch 22," plaintiffs were required to seek court relief, and the court permitted the very intrusion and exposure whose prevention was at the heart of the lawsuit. The very documents petitioners sought to have returned, explicitly because of the private character of the materials, will now be placed on the public record, and all confidentiality inherent in the documents will be destroyed, before the trial court's rulings are ever reviewed by an appellate court. Thus, petitioners

will have been denied meaningful access to the courts because, if the documents are unsealed pending appeal, the injury which is at the heart of the lawsuit will have already occurred; it will be of no avail to prevail on appeal. The court, at that point, will not be able to "unring the bell" rung by the public release of the documents. See Maness v. Meyers, 419 U.S. 449, 592 (1975).

Petitioners have established that they will be effectively deprived of their constitutionally protected privacy rights and First Amendment rights without ever having had the opportunity for appellate review unless an injunction issues. If petitioners prevail on appeal, but the documents have been publicly disseminated, the appellate

victory will have been rendered meaningless. Courts throughout the country must decide what constitutional standards guide their conduct in such circumstances. A grant of certiorari by this court will permit the determination of the constitutional standards which they should apply.

2. UNDER WHAT CIRCUMSTANCES A PARTY'S PRIVACY INTERESTS REQUIRE THE MAINTENANCE OF A SEAL IN THE COURSE OF LITIGATION IS AN IMPORTANT UNRESOLVED CONSTITUTIONAL QUESTION WHICH MUST REGULARLY BE ADDRESSED BY TRIAL COURTS.

The instant petition presents a situation in which the private documents of L. Ron Hubbard, of his family, and of

the religion which he founded, were provided for an authorized biography subject to his final approval. They were taken by a disaffected former adherent. Their private nature will be totally destroyed unless relief is forthcoming from this Court.

The clearest exposition by this Court of the constitutionally based right to privacy is found in Whalen v. Roe, 429 U.S. 589, 599 (1973), where constitutional protection for, at least, "the individual interest in avoiding disclosure of personal matters" and "the individual interest in independence in making certain kinds of decisions" was identified. (Emphasis added.) This Court has long recognized that one's private papers are protected by such a

right of privacy. Boyd v. United States, 116 U.S. 616 (1886); see also Fisher v. United States, 425 U.S. 391 (1976), ("[p]ersonal letters constitute an integral aspect of a person's private enclave") (Brennan, J., concurring); Nixon v. Administrator of General Services, 433 U.S. 425, 465 (1976), (former President Richard Nixon's "private communications between him and, among others, his wife, his daughters, his physician, lawyer, clergyman, and his close friends, as well as personal diary dictabelts and his wife's personal files" were subject to "a legitimate expectation of privacy").

Ironically, a case dramatizing the grave privacy issues at stake here involved some of the same parties. In

United States v. Hubbard, 650 F.2d 293 (D.C. Cir. 1980), the court of appeals recognized that the Church of Scientology of California had property and privacy rights in its internal documents which it could assert, both on its own behalf and on behalf of its membership. The appellate court reversed an unsealing order of the district court that had granted public access to thousands of internal Church documents, which were part of the record at a Fed.R.Crim.P. 41(e) hearing to demonstrate that a government search was overbroad. The court of appeals determined that the district court's unsealing order was clearly erroneous and ordered an immediate resealing of the documents.

In reaching its decision, the Hubbard court relied principally upon a rationale equally applicable in this case. The court observed that one should not have to forfeit one's privacy rights in the course of attempting to uphold those very rights. Id. at 321. What this case presents is an issue which Hubbard did not address -- in determining the very issue of whether documents were wrongfully released to the public, does due process require that the documents be sealed until there is an appellate resolution of the propriety of the unsealing? In Hubbard, the court of appeals did not require that the documents be sealed pending appeal. Hence, the appellate vindication could be and was only partial at best. The

Hubbard case demonstrates the need for this Court to address the issue of whether private material under the control of a court may be publicly released when the very issue of whether they are private and should not be released has not yet been resolved through the court process.

Petitioners herein must not be deprived of their privacy rights in the documents at issue by virtue of the fact that they sought recourse from the courts in order to establish their claim that these documents were wrongfully taken by Mr. Armstrong, and should be returned as private, personal and confidential documents. Plaintiffs' constitutional privacy rights will be irreparably abridged unless the public dissemination

of the documents is enjoined pending an appellate review of the issues in the state case.[2/]

3. WHETHER A PARTY MAY BE DEPRIVED OF JUDICIAL RELIEF BASED UPON GENERALIZED CHARGES OF BAD CONDUCT IS AN IMPORTANT QUESTION OF DUE PROCESS OF LAW.

The superior court, in finding for Armstrong on his affirmative defenses of justification and unclean hands, relied on generalized conclusions that the

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2/ In this case, as in Hubbard, the public dissemination of private documents involves First Amendment as well as privacy issues. The Church and Mrs. Hubbard assert not only privacy interests, but also religious interests flowing from the religion clauses of the United States Constitution. When First Amendment interests are involved, intrusion is only permissible on a showing of a compelling state interest and by the least intrusive means possible. See, e.g., NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).

Church and Mrs. Hubbard had engaged in past misconduct unrelated to the issues in the case. The court, in effect, found that petitioners were not entitled to court relief based upon these characterizations and ruled that the state court defendant, Gerald Armstrong, was justified in converting private documents, breaching his fiduciary duty and invading petitioner Mary Sue Hubbard's privacy.

The resulting constitutional injury caused by the superior court's ruling is analogous to that incurred in Schware v. Board of Examiners, 353 U.S. 232 (1957) and similar cases. In Schware, the petitioner's application to take a state Bar examination had been denied. The applicant had, years earlier, been a

member of the Communist Party, had been arrested on several occasions in the past, and had used aliases more than fifteen years prior to his Bar application. This Court concluded that the standards for qualification for admission to the Bar must be rationally connected with an applicant's fitness or capacity to practice law or run afoul of due process of law. See also, e.g., Healey v. James, 408 U.S. 169 (1972) (local, independent chapter of Students for a Democratic Society could not be denied recognition by a state school based upon violent campus activity of other chapters of the organization).

As has been noted above, the superior court's ruling in this case was based upon allegations of misconduct

which were unrelated to Mr. Armstrong and which occurred in a time frame far removed from that at issue in the case. Reliance on such evidence, in light of the attenuated relationship between the issues in the case and the alleged misconduct, violates due process. Essentially, the Church of Scientology was denied access to the courts because it <u>is</u> the Church of Scientology, not because of what it had done with regard to state defendant Armstrong.

The superior court in this case punished the Church and Mrs. Hubbard for their "association" with conduct allegedly committed by other Scientology affiliated groups, on other occasions, under decidedly different circumstances, and in times long past. The "evidence"

in support of such claims of misconduct was admitted only to show Mr. Armstrong's state of mind. Thus, the usual safeguards limiting the use of hearsay testimony were disregarded. Without regard to the reliability of the evidence presented and without the opportunity for meaningful cross-examination, Mr. Armstrong and the other defense witnesses were permitted to recount virtually every rumor, accusation and subjective reaction regarding the Church and Mr. Hubbard, over approximately a fifty year period. The superior court in turn then utilized this "evidence" to conclude that petitioners were to be treated differently from the citizenry at large and foreclosed them from the judicial relief to which they would otherwise be

entitled. Whether one may be so deprived of judicial relief, before the permissibility of such findings can be subjected to appellate review, is an important question of due process of law.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the order of the Central District of California denying a preliminary injunction and the order of the Ninth Circuit Court of Appeals denying an injunction pending appeal of the Central District's ruling.

Dated: December 6, 1984.

Respectfully submitted,

ERIC M. LIEBERMAN

BARRETT S. LITT

Counsel for Petitioners

APPENDIX

Findings of Fact by the Honorable Harry L. Hupp, United States District Judge (Reporter's Transcript of Proceedings, November 19, 1984, pp. 50-51):

THE COURT: I don't need to make written findings. I can make oral findings. So I am doing so right now.

First I will find I have jurisdiction in referring back to the Miofsky case of Judge Norris in 1983. So I do have jurisdiction.

So far as irreparable injury is concerned, if there is a Constitutional violation, there is irreparable injury to the plaintiffs. But the Court is satisfied that there is no violation of the plaintiffs' Constitutional rights here; that the question of whether exhibits should be sealed or not does not

rise to a federal Constitutional level, is subject only to the state law of California, and that the state courts are the final arbiter of whether the exhibits in their trials should be sealed and remain sealed; that that's true in this situation presented by the plaintiffs as well as in any other kind of litigation involving sensitive personal information with their implication on the rights of privacy; that so far as the state law appellate rights are concerned, that the plaintiff has pursued their rights and the state courts have determined not to keep in effect the preliminary injunction which sealed these documents; and that they pursued that question to the California Supreme Court which ruled against it.

I find no violation or any substantial chance of establishing a violation of the federal Constitution in

determining by the state courts this question of whether exhibits admitted into a state court trial should remain sealed pending appeal in the state court.

Those will be my oral findings. If counsel wish to order a copy of the transcript, they can see the Reporter on that.

And the minute order, of course, should read that the application for a temporary restraining order and preliminary injunction are denied pursuant to the oral findings stated by the Court on the record.

arm-apdx:as#4

BEST AVAILABLE COPY

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CA#: 84-6510

CHURCH OF SCIENTOLOGY OF CALIFORNIA and MARY SUE HUBBARD,	ORDER
Plaintiffs-Appellants,	FILED November 21, 1984 Phillip B. Winberry Clerk, U.S. Court of Appeals
vs.	
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES	
Defendant-Appellee.	

Before: NORRIS, Circuit Judge

It is hereby ordered that Defendant-Appellee Superior Court of the State of California, County of Los Angeles, is enjoined from removing the seal and making available for public inspection those exhibits received in evidence or marked for identification in Los Angeles Superior

Court Case No. C420153, entitled Church of Scientology, et al., v. Gerald Armstrong, and inventories, lists and descriptions of said exhibits received and marked for identification and documents currently under seal.

This injunction is effective until 10:00 a.m., Nov. 27, 1984 so as to give the parties the opportunity to present papers to a regularly constituted motions panel in San Francisco.

The parties shall file their papers in San Francisco no later than close of business on Nov. 23, 1984. Parties shall also serve opposing counsel with the papers no later than 5:00 p.m., Nov. 21, 1984.

William A. Norris,
Circuit Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

	CA#: 84-6510
CHURCH OF SCIENTOLOGY OF CALIFORNIA and MARY SUE HUBBARD, Plaintiffs-Appellants, vs. SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES Defendant-Appellee.	DC# CV-84 8837 HLH Central California ORDER FILED Nov. 27, 1984 Phillip B.Winberry Clerk, U.S. Court of Appeals

Before: POOLE and BEEZER, Circuit Judges

Appellants' emergency motion for an injunction pending appeal is denied. The documents currently under seal in California Superior Court case #C420153, Church of Scientology v. Armstrong, shall remain sealed until 5:00 p.m., pacific standard time, December 7, 1984, to permit appellants to file for certiorari in the

U.S. Supreme Court. No petition for rehearing will be entertained.

armordr2;am#4

No. 84-908

Office-Supreme Court, U.S.
FILED
JAN 3 1985
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

CHURCH OF SCIENTOLOGY OF CALIFORNIA AND MARY SUE HUBBARD,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DE WITT W. CLINTON
County Counsel

GORDON W. TRASK
Senior Deputy
County Counsel

648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
(213) 974-1886

Attorneys for Respondent
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

QUESTION PRESENTED

1. Have the plaintiffs been deprived of a federal Constitutional or statutory right, without due process of law, by a state trial court making exhibits and documents offered as evidence in a civil trial available for public inspection where: (1) the decision to make such exhibits available for public inspection was made on a document by document basis, and (2) the state trial court's decision was reviewed by each of the state's two appellate tribunals.

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No. 84-908

IN THE

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1984

CHURCH OF SCIENTOLOGY OF CALIFORNIA AND MARY SUE HUBBARD,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The orders of the United States District Court and United States Court of Appeal for the Ninth Circuit are contained in the

appendix to the petition.

The judgment of the Superior Court in the case of Church of Scientology of California and Mary Sue Hubbard v. Gerald Armstrong, Case No. C 420153, is contained in the appendix to this Opposition to Petition for Writ of Certiorari.

Defendant Superior Court's Motion to Dismiss the action is calendared for January 14, 1985 in the District Court. (See page A-1 of Appendix hereto.)

JURISDICTION

By the time this court considers the petition, the case may have been rendered moot.

The Ninth Circuit's order sealing the documents expired at 5:00 p.m. on December 7, 1984.

The Superior Court's order of December 3, 1984 (see pages A-3, A-4 and A-5 of Appendix hereto), made the documents public. The Documents were opened to the public on December 19, 1984.

On December 20, 1984, the California Superior Court, in a related case entitled Roe 1 et al. v. Superior Court, Case No. C 527 556, sealed these same documents.

On December 27, the Superior Court ordered that the documents remain sealed pending a hearing for a requested preliminary injunction in the case of Roe 1 et al. v. Superior Court. That hearing is calendered for January 16, 1985.

MEMORANDUM OPPOSING CERTIORARI

Plaintiffs CHURCH OF SCIENTOLOGY of California and MARY SUE HUSBAND filed suit against GERALD ARMSTRONG in the Superior

Court of California. The suit sought return of documents allegedly taken from the plaintiff CHURCH by Mr. ARMSTRONG. Mr. ARMSTRONG submitted numerous documents into evidence during the course of the trial. These documents and documents marked for identification have been ordered by the state trial judge to be available for public inspection. The state trial court made some, but not all, of the documents available for public access after a

document by document determination. See the trial court's memorandum of intended decision at pages A-6 through A-10 of the appendix hereto.

The petitioners were granted temporary orders sealing the documents by both the California Court of Appeal and the California Supreme Court. (See Petition at page 20)

It is clearly established as a rule of law in this country that the records of the courts are generally open for public inspection. While there is no absolute right on the part of the public to inspect all court records, this Court has recognized that courts have supervisory power over their documents and that the decision to grant or deny public access to court documents is a matter to be left in the sound discretion of the trial court, Nixon v. Warner Communications, Inc., 435 U.S. 589, 597-599, 98 S.Ct. 1306, 1312, 55

L.Ed.2d 570 (1978).

The petitioners fail to show any abuse of discretion by the trial court with respect to public access to the documents, or any lack of due process in the state appellate courts' review of that decision.

The lower federal courts have properly refused to exercise their equitable jurisdiction by interfering with the functioning of the state courts. See Huffman v. Pursue Ltd., 420 U.S. 592, 43 L.Ed.2d 482, 95 S.Ct. 1200 (1975).

CONCLUSION

Petitioners have not shown the violation of any federal Constitutional or statutory right, and have been provided due process of law. The petition for Writ of Certiorari should be denied.

DATED:

Respectfully submitted,

DE WITT W. CLINTON
County Counsel

By: GORDON W. TRASK
Senior Deputy

Attorneys for Respondent

APPENDIX

DE WITT W. CLINTON, County Counsel
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648 hall of Administration
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(213) 974-1886

Attorneys for Defendant
SUPERIOR COURT OF THE STATE
OF CALIFORNIA, COUNTY OF
LOS ANGELES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHURCH OF SCIENTOLOGY and MARY SUE HUBBARD,	) CASE NO. CV 84-8837 HLH
Plaintiffs,	) NOTICE OF HEARING DATE
vs.	)
SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES	) DATE: January 14, 1985) TIME: 10:00 a.m.) COURTROOM: 255
Defendant.	)

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

Defendant SUPERIOR COURT'S Motion To Dismiss, noticed to be heard on January 7, 1985 at 10:00 a.m. in courtroom 255 has

been set by the court to be heard on January 14, 1985 at 10:00 a.m. in courtroom 255 of the UNITED STATES COURTHOUSE, located at 312 North Spring Street, Los Angeles, California.

DATED: (December 13, 1984)

Respectfully submitted,

DE WITT W. CLINTON,
County Counsel

By /s/
GORDON W. TRASK
Senior Deputy County Counsel

Attorneys for Defendant.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Date DEC.3, 1984
HONORABLE P G BRECKENRIDGE, JR JUDGE
P. RICO, COURT ATTENDANT
R HART Deputy Clerk
N HARRIS Reporter

C 420155
CHURCH OF SCIENTOLOGY OF CALIFORNIA,

VS

GERALD ARMSTRONC,

Counsel for Pltf.
Litt & Stormer
BY: MICHAEL S. MAGNUSON
Counsel for Deft.
Peterson & Brynan
BY: JOHN G. PETERSON
Overland, Berke, Wesley et al
BY: DONALD C. RANDOLPH
MICHAEL LEE HERTZBERG-Pro Hac Vice
O'Toole, Bisceglie & Walsh
BY: JEFFREY B. O'TOOLE-ProHac Vice

Contos & Bunch
BY: JULIA DRAGOJEVIC
for Deft. Armstrong

United States Attorney
BY: KATHRYN TATE AND JOHN W. TOOTHMAN
for moving party

NATURE OF PROCEEDINGS:
SECOND NOTICE OF MOTION OF UNITED STATES, A NON PARTY, TO INSPECT AND COPY GERTAIN SEALED EXHIBITS

Upon request of counsel, Michael Lee

Hertzberg for plaintiff and Deputy United

States Attorney John W. Toothman for moving party, are permitted to appear Pro Hac Vice.

Counsel for plaintiff Chruch represents to the Court that a Motion under 170.6(2) CCP has been filed and requests that the Motion be set for hearing. The Court orders the 170.6(2) CCP stricken as untimely and the request to set forhearing is denied. Upon request of plaintiff the Court finds that plaintiff has not waived any rights under 170.6(2) CCP by proceeding with this hearing.

The Motion to inspect is argued and continued to February 11, 1985 at 9 A.M. this dept.

The Court orders that none of the exhibits are to be made available to anyone until the Order of the 9th Circuit or any Order of the Supreme Court has expired. And thereafter no one is to be permitted access

to the exhibits ordered sealed by this Court. The unmarked exhibits are subject to the continuing jurisdiction of this Court to permit inspection or the parties may avail themselves of Judge Cole's order.

The Court orders that the Clerk of this courtroom, R. Hart, be assigned to segregate the exhibits.

Plaintiff's request that certified copies of the unsealed documents be used by the exhibit room for public inspection, is granted at the expense of plaintiff. Request of both sides to make copies of the certified copies is granted and each side to bear own costs; counsel to contact the Clerk for procedure and fees.

The County Clerk is directed to follow Standard Operating Procedures in inspection and copying exhibits.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, Defendant. MARY SUE HUBBARD, Intervenor.	No. C. 420153 MEMORANDUM OF INTENDED DECISION

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean

hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's

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1. Exhibits in evidence No. 500-40; JJJ; KKK; LLL; MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

attorneys to the cttorneys by the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may at any time by written stipulation filed

with the clerk obtain release of any or all such unused materials.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention,

and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and

thenceforth into the custody of the County Clerk.

Plaintiff Church as made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion and invasion of privacy (misuse by a person of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the

organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good

faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

" Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

"Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

"One is privileged to commit an act which would otherwise be a

trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion of intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church as asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind

are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology

Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste or loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under

the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization

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2. Exhibit 500-HHHHH.

clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding

protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose

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3. See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

of not seeing, hearing, or knowing any evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order 'go 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs."

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4. Exhibit AAA.

The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost lawyer-enemy.[5] However, just as the plaintiffs have First Amendment rights, the defendant has a

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5. "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer

and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The practice of culling supposedly confidental "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church.

The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

/s/

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him

exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

In January of 1980 there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the

Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a

time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research.

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard

Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out," a mission to work out legal strategy. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980 that Hubbard left the location in Gilman Hot Springs, California, and went into hiding. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went to the Commodore's Messenger Organization, the personal representatives of Hubbard.

In June of 1980 Defendant Armstrong became involved in the selection of a writer for the Hubbard biography. Defendant Armstrong learned that Hubbard had approved

of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980 Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time.

This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. On October 30, 1980, an agreement was entered into between Ralston-Pilot, ncv. F/S/O Omar V. Garrison, and AOSH DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an officer assistant and/or research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following

his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from

"Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980, to her in which Defendant stated, at page 7, that there were materials in the"Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of

Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization

unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for Mr. Garrison - one for Mr. Garrison and the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their

care.

It was not until late 1981 that Plaintiff was to provide a person to assist on the biography project by providing Mr. Garrison with "Guardian Office' materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaughn Young. Controller Archives and Guardian Office Archives had no connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected,

assembled, and read hundreds of thousands of pages of documentation in Hubbard's Archives.

During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted to Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books,

and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organization and its leader discontinue the perpetration of the massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called an E-meter.

The Organization wished to determine what materials Defendant Armstrong had

provided to Omar Garrison, Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the public about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning and that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

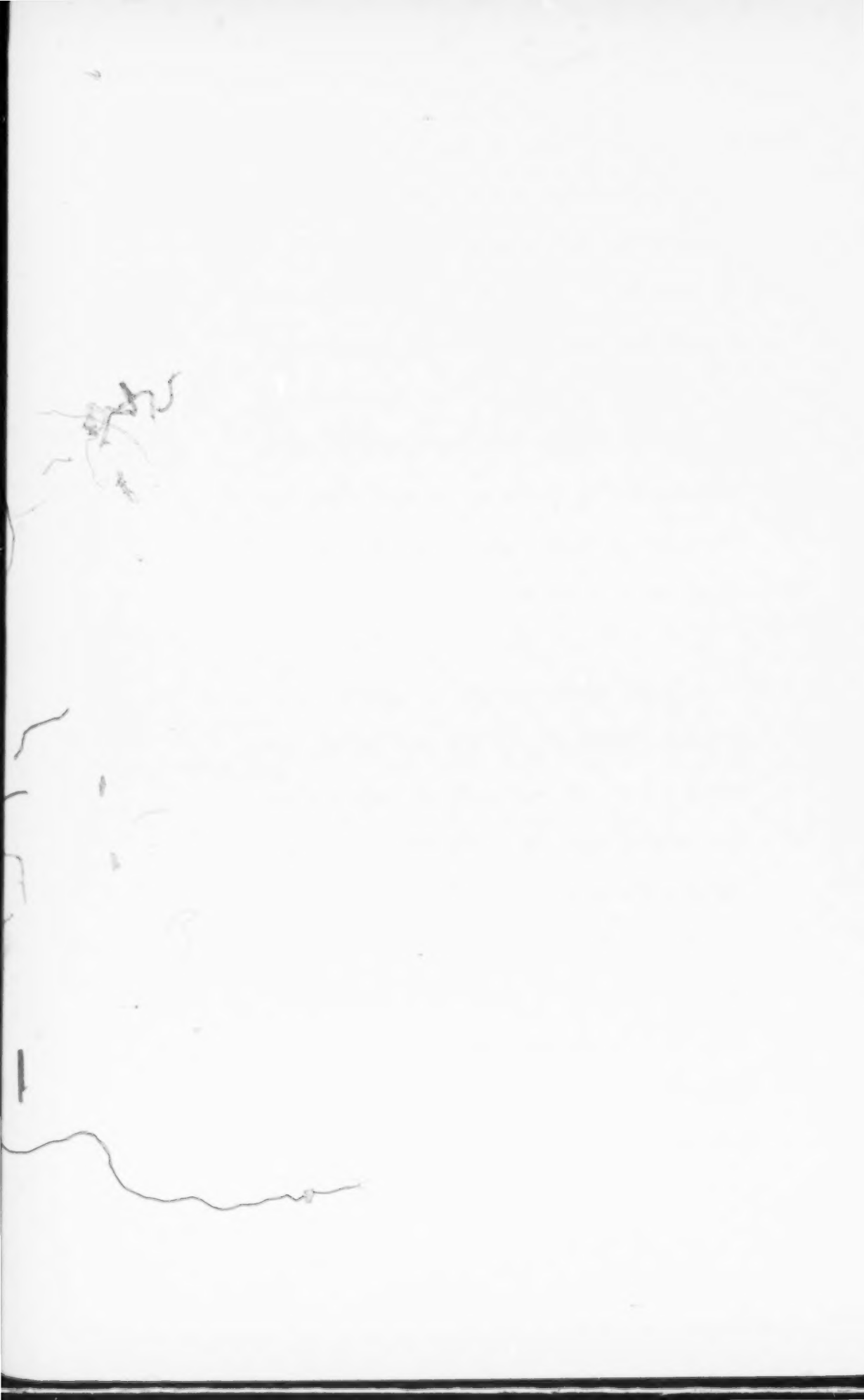
Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25, 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding Hubbard were done in good

faith. In his letter he stated as follows:

"If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

. . .

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact



should be documentable.

"we are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm talking here about biographical or non-technical writings. This only leads, should

any of his statements turn out to be inaccurate, to a make-wrong of him, and consequently his technology.

"That's what I'm trying to remedy and prevent.

. . .

"To say that LRH is not capable of hype, errors or lies is certanly [sic] not granting him much of a beingness. To continue on with the line that he has never erred nor lied is counterproductive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.

. . .

". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."

The remainder of the leter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981 Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in his commitment to Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories

of materials. In fact on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison.

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant Armstrong continued to assist Mr. Garrison with the Hubbard biography project. In the spring of 1982, Defendant

Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, The Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church, its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows any suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on board Hubbard's ship (in which Hubbard appears), and

photographs belonging to some of his friends, which also included photos of L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he never received payment or return of his friend's photographs. When he became aware that the Church had these photographs, he went to the Organization to request their return. A loud and boisterous argument ensued, and he eventurally was told to leave the premises and get an attorney.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition,

Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts

made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony. It is not clear how the church became aware of defense intentions to call Mr. Schomer as a witness, but it is abundantly clear they sought to entice him back into the fold and prevent his testimony.